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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION  
DIVISION OF REGULATION

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Amendment of Section 73.202(b) Table of  
Allotments FM Broadcast Stations (North  
Canaan and Sharon, Connecticut and  
Rosendale, New York

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TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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COMMENTS ON PETITION FOR RULE MAKING

State University of New York ("SUNY"), by its counsel, provides these comments on the Petition for Rule Making filed December 1, 1995 by Sacred Heart University, Inc. ("SHU") with respect to the captioned matter. SHU seeks to have the Commission modify Section 73.202(b) of the Rules to allot FM Channel 277A at North Canaan, Connecticut and substitute Channel 273A for 277A at Sharon, Connecticut (thereby modifying the license of Station WQQQ(FM) at Sharon). This would necessitate changing newly allotted Channel 273A at Rosendale, New York (proposed by SUNY) to Channel 255A.

SUNY opposes the SHU Petition. It is no more than a cleverly disguised, but untimely, request for reconsideration of the FCC's recent Report and Order in MM Docket No. 93-17, RM-8170, 60 Fed. Reg. 54954 (October 27, 1995), wherein the FCC allotted Channel 273A at Rosendale, New York. In so doing, the FCC rejected as procedurally defective a Joint

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Counterproposal by SHU and the licensee of WQQQ which would have resulted essentially in the configuration of channels now proposed by SHU--255A at Rosendale, 273A for WQQQ (albeit at a different city of license, Washington, New York) and 277A for SHU's use (then at Sharon, Connecticut, now at nearby New Canaan, Connecticut).

In Docket No. 93-17, SUNY described its concern that Channel 255A at Rosendale, by virtue of applicable site restrictions, would not permit its Station WFNP at Rosendale to provide noncommercial educational programming service as effectively as the requested (and allotted) Channel 273A. This concern still applies; substituting 255A for 273A at Rosendale would result in diminished service to WFNP's audience.<sup>1/</sup>

In Docket No. 93-17, SHU had an opportunity to argue that 255A should be allotted to Rosendale rather than 273A, thus permitting the FCC to substitute 273A for 277A for WQQQ and allot 277A for SHU's application at Sharon. That opportunity was lost due to SHU's apparent penchant for shuffling cities of license (in that case, proposing to modify WQQQ's city of license in violation of Section 1.420(i) of the Rules).

SHU also had an opportunity to seek reconsideration of the R&O in Docket No. 93-13, but did not do so by the deadline of November 27, 1995. Instead, on December 1, 1995, it chose to make its essentially similar proposal for 273A for WQQQ and 277A for SHU as a new petition for rulemaking. Once again, SHU plays games with cities of license, presumably hoping

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<sup>1/</sup> SUNY intends to file an application in the Rosendale Channel 273A window to modify Station WFNP to specify operation on the new channel. In addition, on November 21, 1995, SUNY filed a Petition for Reconsideration of the Docket No. 93-17 Report and Order, urging that the WFNP license should be modified to Channel 273A pursuant to Section 1.420(g) of the Rules.

to make its new proposal different enough from its last one to excuse the fact that it missed the reconsideration deadline for Docket No. 93-17. SHU also seems to think that its plan to bring its programming service to northwestern Connecticut can proceed from whatever city of license it deems convenient at any given moment, depending on the allocational benefits of one city as opposed to another. (In this case, SHU's interest appears to be to find a city of license that will be comparatively superior to the already mutually exclusive filing of Raymond A. Natole for Channel 255A at West Hurley, New York.) In any case, the new proposal is simply a rehash of the old one and should have been raised on reconsideration in Docket No. 93-17.

**Conclusion**

For the foregoing reasons, SUNY opposes the SHU Petition and urges that it be dismissed.

Respectfully submitted,

**STATE UNIVERSITY OF NEW YORK**

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December 13, 1995

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "Comments on Petition for Rule Making" was served this 13th day of December, 1995, by first class United States mail, postage prepaid, upon the following:

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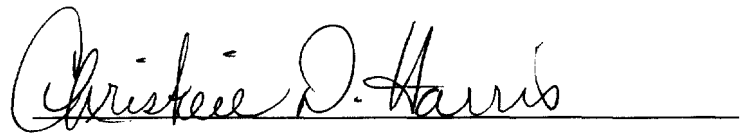
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A handwritten signature in cursive script, reading "Christine D. Harris", is written over a horizontal line.

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\* Via Hand Delivery.